



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52 and 70**

**[EPA-R07-OAR-2017-0485; FRL-9976-52-Region 7]**

**Approval of Nebraska Air Quality Implementation Plans, Operating Permits Program, and 112(1) Program; Revision to Nebraska Administrative Code**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve revisions to the State Implementation Plan (SIP), Operating Permits Program, and 112(1) Program submitted on July 14, 2014, by the State of Nebraska. This action amends the SIP to revise two chapters, "Definitions" and "Operating Permit Modifications; Reopening for Cause". Specifically, these revisions incorporate by reference the list of organic compounds exempt from the definition of volatile organic compound (VOC) found in the Code of Federal Regulations; notification requirements for the operating permit program are being amended to be consistent with the Federal operating permit program requirements; the definition of "solid waste" is being revised by the state, however, because the state's definition is inconsistent with the Federal definition, EPA is not approving this definition into the SIP. Finally, the state is extending

the process of "off-permit changes" to Class I operating permits. Additional grammatical and editorial changes are being made in this revision. Approval of these revisions will not impact air quality, ensures consistency between the state and Federally-approved rules, and ensures Federal enforceability of the state's rules.

**DATES:** This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R07-OAR-2017-0485. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov> or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gregory Crable, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at (913) 551-7391, or by email at [crable.gregory@epa.gov](mailto:crable.gregory@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document "we," "us,"

and “our” refer to EPA. This section provides additional information by addressing the following:

- I. Background
- II. What is Being Addressed in this Document?
- III. Have the Requirements for Approval of a SIP Revision Been Met?
- IV. EPA’s Response to Comments
- V. What Action is EPA Taking?
- VI. Incorporation by Reference
- VII. Statutory and Executive Order Reviews

## **I. Background**

On October 5, 2017, EPA proposed to approve revisions to the SIP, Operating Permits Program, and 112(l) Program for the State of Nebraska. See 82 FR 46453. In conjunction with the October 5, 2017 notice of proposed rulemaking (NPR), EPA issued a direct final rule (DFR) approving the revisions to the SIP, Operating Permits Program, and the 112(l) Program. See 82 FR 46420. In the DFR, EPA stated that if adverse comments were submitted to EPA by November 6, 2017, the action would be withdrawn and not take effect. EPA received one adverse comment prior to the close of the comment period. EPA withdrew the DFR on November 28, 2017. See 82 FR 56173. This action is a final rule based on the NPR.

## II. What is Being Addressed in this Document?

Nebraska's July 14, 2014, submission requested revisions to seven chapters of "Title 129-Nebraska Air Quality Regulations". This action will amend the SIP to include revisions to two of those chapters, title 129 of the Nebraska Administrative Code, chapter 1 "Definitions", and chapter 15 "Operating Permit Modifications; Reopening for Cause". Of the remaining five chapters, EPA previously approved revisions to two of the chapters in separate direct final rulemakings published in the **Federal Register**. Chapter 4, "Ambient Air Quality Standards" was approved on October 11, 2016, and chapter 34 "Emission Sources; Testing; Monitoring" was approved on October 7, 2016. EPA will take action separately on two other chapters, chapter 20 "Particulate Emissions; Limits and Standards" and chapter 18 "New Performance Standards". The final chapter, chapter 28 "Hazardous Air Pollutants; Emissions Standards", submitted as part of the July 14, 2014, SIP submission, is not approved in the Nebraska SIP and therefore EPA will take no further action for this chapter.

EPA is approving revisions to the Nebraska SIP and Operating Permits Program in title 129, chapter 1 "Definitions". The definition of VOC contained in section 160 of chapter 1 "Definitions" is being revised. Specifically, section 160 of chapter 1 contains a definition of VOC that provides exceptions

to the definition based upon a list of organic compounds, which have been determined to have negligible photochemical reactivity. Because it is difficult to stay current in regard to the list of compounds, the revision EPA is approving removes the list at section 160, and references the list contained in the Code of Federal Regulations at 40 CFR 51.100(s)(1) and (5). In addition, revisions to chapter 1, section 139, are being made to the SIP and the Operating Permits Program to change the notification requirements for "section 502(b)(10) changes" to require facilities to provide written notification at least 7 days in advance, rather than 30 days. This revision makes the notification requirements consistent with the Federal operating permit program requirements. In addition, Nebraska requested revisions to the definition of "solid waste" at chapter 1, section 144, to make it consistent with the definition of "solid waste" included in the Nebraska Environmental Protection Act and other applicable regulations in Nebraska.<sup>1</sup> Neb. Rev. Stat. 81-1502(26). The definition as proposed by the Nebraska Department of Environmental Quality (NDEQ) is not consistent with the definition of "solid waste" in Federal law and regulations. Therefore, EPA is not approving Nebraska's proposed revision to the definition of "solid waste" into the State Implementation

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<sup>1</sup> The definition of "solid waste" in the Nebraska Environmental Protection Act was updated in 2013 as a result of Legislative Bill 203 to exclude "slag" from the definition. This revision further clarifies that "slag" is a by-product of value and therefore is excluded from the definition of "solid waste."

Plan or Operating Permits Program. Finally, other grammatical and numerical edits are being made in this chapter.

EPA is approving revisions to the Nebraska SIP, Operating Permits Program and 112(1) Program for chapter 15 "Operating Permit Modifications; Reopening for Cause", which extends "off-permit changes" to Class I and II operating permits as allowed under the Federal program. Section 007 of chapter 15 is being revised and updated allowing changes within a permitted facility without a permit revision if the change meets certain specified criteria. The revised process allows certain minor revisions to be made without requiring all applicable administrative procedures for full permit issuance. These changes ensure that chapter 15 conforms to applicable Federal regulations. Finally, revisions to chapter 15 amend the minimum number of days to submit a written notification of a change from thirty days to seven days under certain circumstances when changing Class I and II operating permits, and makes various grammatical revisions for clarity and consistency purposes.

### **III. Have the Requirements for Approval of a SIP Revision Been Met?**

The state submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The revised chapters were placed on public notice and a public hearing was held by the state on January 6, 2014, where no comments were received. In addition, as explained in this preamble, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

### **IV. EPA's Response to Comments**

The public comment period on EPA's proposed rule opened October 5, 2017, the date of its publication in the **Federal Register**, and closed on November 6, 2017. During this period, EPA received a comment from one commenter.

Comment 1: The commenter stated that EPA must act on the state's submitted request to change the definition of solid waste, and that EPA does not have the discretionary authority to not act on state's submission. The commenter stated that EPA is required to act on the state's submission within a maximum of 18 months from the state's submission and stated that the state's requested

revisions to the definition of solid waste was submitted in 2014, greater than 36 months prior to the October 5, 2017, Federal Register notice. The commenter further stated that EPA must disapprove the state's submittal regarding the definition of solid waste as it is inconsistent with the Federal rules as EPA outlined in its October 5, 2017, Federal Register notice.

Response 1: Section 110(k) of the CAA authorizes EPA to approve a SIP submission in full, disapprove it in full, or approve it in part and disapprove it in part, or conditionally approve it in full or in part, depending on the extent to which such plan meets the requirements of the CAA. This authority to approve state SIP submissions in separable parts was included in the 1990 Amendments to the CAA to overrule a decision in the Court of Appeals for the Ninth Circuit holding that EPA could not approve individual measures in a SIP submission without either approving or disapproving the plan as a whole. See S. Rep. No. 101-228, at 22, 1990 U.S.C.C.A.N. 3385, 3408 (discussing the express overruling of *Abramowitz v. EPA*, 832 F.2d 1071 (9th Cir. 1987)).

EPA interprets its authority under section 110(k) of the CAA as affording the Agency the discretion to approve, disapprove, or conditionally approve, individual portions of Nebraska's SIP revision. EPA views the SIP revisions to the definition of solid waste, as severable from other portions of



the SIP revision and interprets section 110(k) as allowing it to act on individual severable portions in a SIP submission. In short, EPA believes it has the discretion under section 110(k) of the CAA to act upon the various individual portions of the state's SIP revision, separately or together, as appropriate. This discretion exists even when the deadline to act on the SIP submission as a whole has passed. EPA will address the definition of solid waste in a separate rulemaking action.

#### **V. What Action is EPA Taking?**

EPA is taking final action to amend the Nebraska SIP to approve revisions to title 129, chapters 1 and 15. EPA is not approving Nebraska's revised definition of "solid waste" in title 129, chapter 1.

#### **VI. Incorporation by Reference**

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Nebraska Regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 7 Office

(please contact the person identified in the "For Further Information Contact" section of this preamble for more information).

Therefore, these materials have been approved by EPA for inclusion in the State Implementation Plan, have been incorporated by reference by EPA into that plan, are fully Federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.<sup>2</sup>

## **VII. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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<sup>2</sup> 62 FR 27968 (May 22, 1997).

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other

required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

**List of Subjects**

*40 CFR Part 52*

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

*40 CFR Part 70*

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: March 27, 2018.

Karen A. Flournoy,  
Acting Regional Administrator,  
Region 7.

For the reasons stated in the preamble, EPA amends 40 CFR parts 52 and 70 as set forth below:

## **PART 52-APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### **Subpart CC-Nebraska**

2. In §52.1420, revise the section heading and in the table in paragraph (c) the entries "129-1" and "129-15" to read as follows:

#### **§52.1420 Identification of plan.**

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(c) \* \* \*

#### **EPA-APPROVED NEBRASKA REGULATIONS**

<b>Nebraska citation</b>	<b>Title</b>	<b>State effective date</b>	<b>EPA approval date</b>	<b>Explanation</b>
<b>STATE OF NEBRASKA</b>				
<b>Department of Environmental Quality</b>				
<b>Title 129-Nebraska Air Quality Regulations</b>				
129-1	Definitions	5/13/14	[insert date of publication in the Federal Register], [insert Federal Register citation]	The proposed definition of "solid waste" is not approved into the SIP. The second sentence beginning at "Solid waste" and ending at "discarded material", is not approved into the SIP.
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129-15	Operating Permit Modifications; Reopening for Cause	5/13/14	[insert date of publication in the Federal Register], [insert Federal Register citation]	
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**PART 70-STATE OPERATING PERMIT PROGRAMS**

3. The authority citation for part 70 continues to read as follows:

**Authority:** 42 U.S.C. 7401, *et seq.*

4. In appendix A to part 70 add paragraph (o) under "Nebraska; City of Omaha; Lincoln-Lancaster County Health Department" to read as follows:

**Appendix A to Part 70-Approval Status of State and Local  
Operating Permits Programs**

\* \* \* \* \*

*Nebraska; City of Omaha; Lincoln-Lancaster County Health  
Department*

\* \* \* \* \*

(o) The Nebraska Department of Environmental Quality submitted revisions to the Nebraska Administrative Code, title 129, chapter 1, "Definitions" and chapter 15, "Operating Permit Modifications; Reopening for Cause" on July 14, 2014. The state effective date is May 13, 2014. This revision is effective **[insert date 60 days after date of publication in the Federal Register]**.

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